

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDY SIMMONS,

Plaintiff,

v.

Case No. 1:05-cv-744
HON. ROBERT HOLMES BELL

CORRECTIONAL MEDICAL
SERVICES, et al.,

Defendants.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge on July 28, 2006. The Report and Recommendation was duly served on the parties. The Court received objections from Defendants Correctional Medical Services, Inc. (CMS) and Dr. H. Pandya. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Defendant CMS states that the Magistrate Judge erred in finding that Plaintiff had adequately pleaded a policy, practice or procedure in order to hold them liable. However, Defendant CMS merely reiterates the arguments presented in the motion to dismiss. As noted in the report and recommendation, Plaintiff's complaint shows that Defendant CMS continually refused to authorize treatment despite the recommendations of at least two doctors and one physician's assistant. In Plaintiff's response to the motion to dismiss, he asserts that Defendant CMS had an unwritten policy

of consistently denying prison inmates adequate health care in the interest of making a profit. The allegations regarding Plaintiff's course of treatment support this assertion. For the reasons set forth in the report and recommendation, these arguments lack merit.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket #14) is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that defendants' motion to dismiss (docket #7) is GRANTED IN PART AND DENIED IN PART. The motion is GRANTED with regard to Defendants Pandya and ITF Healthcare and DENIED with regard to Defendant CMS.

Date: August 31, 2006

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE